A.F.R. (48)

27/9/04

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2117 of 2004

Rajiv Kumar Singh

- Versus -

State of Chhattisgarh and another

Writ Petition No.2182 of 2004

Ganesh Ram Chandravanshi and six others

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2195 of 2004

Shankar Singh and five others

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2264 of 2004

Gram Panchayat Kirwai and two others

- Versus -

State of Chhattisgarh and four others

Writ Petition No.2267 of 2004

Asharam Sahu

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2322 of 2004

Gajanan Singh and another

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2433 of 2004

Geetaram Gond and another

- Versus -

State of Chhattisgarh and another

Writ Petition No.2487 of 2004

Anand Ram

- Versus -

State of Chhattisgarh and two others

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Writ Petition No.2500 of 2004

Todar Singh Kaushik

- Versus -

State of Chhattisgarh and another

Writ Petition No.2605 of 2004

Puran Lal Pishada

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2672 of 2004

Basant Kumar and four others

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2674 of 2004

Dinbandhu Gupta

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2800 of 2004

Rajesh Sahu

- Versus -

State of Chhattisgarh and another

Writ Petition No.2829 of 2004

Laxman Singh Paikra

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2833 of 2004

Ramayan Singh

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2871 of 2004

Ishwar Barik and another

- Versus -

State of Chhattisgarh and two others

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Writ Petition No.2968 of 2004

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- Versus -

State of Chhattisgarh and four others

Writ Petition No.2988 of 2004

Iswar Ram Sinha

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2989 of 2004

Mahangu Ram Sahu and another

- Versus -

State of Chhattisgarh and two others

Writ Petition No.2990 of 2004

Ganesh Ram Koshare

- Versus -

State of Chhattisgarh and two others

Writ Petition No.3114 of 2004

Heera Ram Choudhary

- Versus -

State of Chhattisgarh and two others

Writ Petition No.3149 of 2004

Smt. Shahida Begum

- Versus -

State of Chhattisgarh and two others

AND

Writ Petition No.3178 of 2004

Om Prakash Mishra and another

- Versus -

State of Chhattisgarh and four others

POST FOR ORDER ON 27th SEPTEMBER, 2004

Sd/-
L.C. Bhadoo
Judge

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Smt. Shahida Begum

- Versus -

State of Chhattisgarh and two others

AND

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Writ Petition No.3178 of 2004

Om Prakash Mishra and another

- Versus -

State of Chhattisgarh and four others

Present: -

Mr. Kanak Tiwari, Advocate:	For the petitioners in W.P.No.2264/2004.
Mr. Sunil Sinha, Advocate:	For the petitioner in W.P.No.2117/2004.
Mr. P.K.C. Tiwari, Advocate:	For the petitioners in W.P.No.2433/2004.
Mr. Rajesh Pandey, Advocate:	For the petitioner in W.P.No.3149/2004.
Mr. Rajeev Shrivastava, Advocate:	For the petitioners in W.P.Nos.2182/2004 and 2672/2004.
Mr. Manoj Paranjpe, Advocate:	For the petitioner in W.P.No.2871/2004.
Mr. Gautam Khetrapal, Advocate:	For the petitioner in W.P.No.2487/2004.
Mr. J.A. Lohani, Advocate:	For the petitioner in W.P.No.2968/2004.
Mr. Parag Kotecha, Advocate:	For the petitioners in W.P.Nos.2605/2004, 2988/2004, 2989/2004 and 2990/2004.
Mr. A.S. Rajput, Advocate:	For the petitioner in W.P.No.2833/2004.
Mr. R.S. Patel, Advocate:	For the petitioner in W.P.No.2829/2004.
Mr. Malay Kumar Bhaduri, Advocate:	For the petitioner in W.P.No.2500/2004.
Mr. Azad Siddique, Advocate:	For the petitioner in W.P.No.3178/2004.
Mr. M.L. Pastore, Advocate:	For the petitioner in W.P.No.2267/2004.
Mr. Anup Mazumdar, Advocate:	For the petitioner in W.P.No.2674/2004.
Mr. Hemant Kesharwani, Advocate:	For the petitioner in W.P.No.2800/2004.
Mr. Pushpendra Kumar Patel, Advocate:	For the petitioner in W.P.No.2195/2004.
Mr. Sudhir Verma, Advocate:	For the petitioner in W.P.No.2322/2004.
Mr. Yogesh Pandey, Advocate:	For the petitioner in W.P.No.3114/2004.
Mr. N.K. Agrawal, Dy. Advocate General:	For the State/respondents.

O R D E R

(Passed on 27th September, 2004)

L.C. BHADOO, J.

1. **Legislative Background**: -

After the Constitution (Seventy Third Amendment) Act, 1992 came into force, Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam,

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1993 (No.1 of 1994) (hereinafter referred to as 'the Act') has been enacted conforming to the provisions of Part-IX of the Constitution. After the Act came into force, by notification specifying village or group of villages, Panchayats have been constituted and established as per the provisions of Sections 8 & 10 of the Act. Further, the Gram Panchayats have been divided into wards as per the provisions of Section 12 of the Act. Thereafter, the Panchayat Elections of the year 1994 in the erstwhile State of Madhya Pradesh were conducted and again in the year 1999, on completion of five years' term, the Panchayat Elections were conducted. Under the M.P. Reorganization Act, 2000 (No.28 of 2000), the State of Chhattisgarh was carved out from the State of Madhya Pradesh with effect from 1st November, 2000. The State of Chhattisgarh has adopted the Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993, as also the notification dated 23.2.1999 issued under Sections 3, 125, 126 & 129-B of the Act, whereby, the Governor of Madhya Pradesh, in exercise of the powers conferred by Rule 2 of Part 1 of the Rules of Business of Executive Government of Madhya Pradesh, directed that the cases under Sections 3, 125, 126 and 129-B of the Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993 (No.1 of 1994) shall be disposed of by the Collector of the concerned revenue district. The general elections of the Panchayat are due in this year as the five years tenure of the existing Panchayats is expiring during this year.

2. In the year 2001, the general census was conducted by the Government of India. As the population of various areas increased, therefore, before conducting the Panchayat Elections 2004, the State Government of Chhattisgarh decided to undertake delimitation of Panchayats under Sections 3, 8, 10, 12, 17, 23, 30, 125, 126, 127, 129-B & 129-E read with notification No.B-1-11-95-XXII-P-2 dated 23.2.1999, and accordingly issued notification dated 1.6.2004 (Annexure R-2). In para 4 of the said notification (Annexure R-2) it has been mentioned that on account of Census 2001, the area of existing Village Panchayats, Janpad Panchayats,

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District Panchayats and wards may be effected. Para 4.1 of the same which is in conformity with Article 243-E of the Constitution of India further envisages that the minimum population of the Gram Panchayat shall be 1,000 and that will divided into ten wards; if the population is above 1,000, then maximum there shall be twenty wards, however, the population of each ward shall be same. If in the public interest, on the basis of Census 2001, any request is made for change in the area of Panchayat on the ground that they are facing difficulty on account of the distance to go to the Panchayat headquarter, on account of the road condition, river, drainage, mountain or forest, even then it will be ensured that the revenue Patwari circle should not break. On such demand, at the time of addition or alteration in the Gram Panchayat area it will be ensured that the revenue Patwari circle should not break. For the purpose of reorganization/delimitation of the Gram Panchayats, through preliminary notification, suggestions/objections will be invited under Rule 3 of the Chhattisgarh Panchayat Election Rules, 1995, and those will be decided on the merits and demerits after hearing. In pursuance of the above notification, the State of Chhattisgarh issued another notification dated 25th June, 2004 (Annexure R-1), in which it has been mentioned that the preliminary notification regarding delimitation of the Panchayat shall be issued on 25.6.2004; three copies of the preliminary notification shall be sent to the Secretary to the Government of Chhattisgarh on 26.6.2004; suggestions/ objections and claims shall be submitted to the Sub Divisional Officer (Revenue) up to 3.7.2004; the S.D.O. (Revenue) shall give personal hearing on 5.7.2004; thereafter, the S.D.O. (Revenue) shall submit his report to the Collector on 7.7.2004; the Collector shall issue final notification for formation of village on 12.7.2004; on 13.7.2004 five copies of the final notification issued by the Collector shall be sent to the Secretary to the Government of Chhattisgarh; and on that day the notification shall be published in the Gazette.

3. In pursuance of the above notifications, respective Collectors of concerned districts issued preliminary and final notifications as per the

time schedule. Being aggrieved by those final notifications dated 12.7.2004, this batch of writ petitions have been filed by the aggrieved persons challenging the legality, propriety and correctness of the above said notifications. At this stage, it would be beneficial to look into various legal provisions regarding the constitution of villages, Gram Panchayats etc. Section 2 (vii) of the Act envisages that

> "Gram Panchayat" means a Gram Panchayat established under sub-section (1) of Section 10.

Section 2 (xix) of the Act envisages that

> "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Section 2 (xxix) of the Act envisages that

> "Village" means a village specified by the Governor by public notification to be a village for the purposes of this Act and includes a group of villages so specified.
>
> *Explanation.* —Term village includes revenue village and forest village.
>
> "**3. Notification of village.** —The Governor shall by public notification specify a village or group of villages to be a village for the purpose of this Act."
>
> "**8. Constitution of Panchayat.** —There shall be constituted for the purpose of this Act—
>
> (a) a Gram Panchayat for a village;
> (b) a Janpad Panchayat for a Block; and
> (c) a Zila Panchayat for a district."
>
> "**10. Establishment of Gram Panchayat, Janpad Panchayat and Zila Panchayat.** —(1) There shall be a Gram Panchayat for every village specified as a village for the purpose of this Act under Section 3."
>
> "**12. Division of Gram Panchayat into wards.** —Each Gram Panchayat area shall be divided into not less than ten wards as may be determined by the Collector and each ward shall be a single member ward:
>
> Provided that where the population of Gram Panchayat area is more than one thousand it shall be divided into wards in such manner that the total number of wards shall not exceed twenty and the population of each ward shall as far as practicable, be the same in each ward:

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Provided further that the ratio between the population of the Gram Panchayat area and the number of wards in such Panchayat shall, so far as practicable, be the same throughout the block within which the Panchayat area falls."

"**13. Constitution of Gram Panchayat.** —(1) Every Gram Panchayat shall consist of elected Panchas and a Sarpanch."

"**93. Delegation of powers.** —(1) The State Government, may by notification, delegate to or confer on any officer subordinate to it or to any Panchayat all or any of the powers conferred upon it by or under this Act, except the powers relating to framing of rules.

(2) The powers delegation under sub-section (1) shall be exercised in accordance with the general or special order issued by the State government in this behalf.

(3) The State Government may by notification prescribe various authorities under this Act."

"CHAPTER XIII - MISCELLANEOUS

125. Changes of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area. —(1) The Governor or the authority authorized by him may by order change the headquarters of a Gram Panchayat or alter, the limits of a Gram Panchayat area by including within it any local area in the vicinity thereof or by excluding therefrom any local area comprised therein or amalgamate two or more Gram Panchayat areas and from one Gram Panchayat area in their place or split up a Gram Panchayat area and from two or more Gram Panchayat areas in its place:

Provided that no order under this section shall be made unless a proposal in this behalf is published for inviting suggestions and objections in such manner as may be prescribed and objections are considered.

(2) On the issuance of the order under sub-section (1) the Governor or the prescribed authority shall pass such consequential orders as may be necessary."

"**126. Disestablishment of village.** —(1) The Governor or the authority authorized by him may, by an order in writing, disestablish a village:

Provided that no such order shall be issued unless a notice of the proposal inviting objections from persons likely to be affected thereby the date to be specified therein has been published in the prescribed manner and the objections received have been considered.

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(2) On making of the order under sub-section (1) the Governor or the authority authorized by him may pass such consequential orders as may be necessary."

"**129-B. Constitution of Village and Gram Sabha** (in the scheduled areas). —(1) The Governor shall by public notification specify a "Village" for the purposes of this chapter."

The Governor of Madhya Pradesh issued notification dated 23.2.1999 under Section 3 of the Act authorizing the District Collectors to exercise powers under the Act, and directed that the cases under Sections 3, 125, 126, and 129-B of the Act (No.1 of 1994) shall be disposed of by the Collector of the concerned revenue district. In this connection, the Madhya Pradesh Panchayat (Alteration of Limits, Disestablishment or Change of Headquarters) Rules, 1994 (hereinafter referred to as 'the Rules') were framed. Rules 3 & 4 of the above said Rules are relevant, which read thus: -

"**3. Change of headquarters of Gram Panchayat, division, amalgamation or alteration of Gram Panchayat area.** —(1) Where the Governor or the authority authorized by him decides under sub-section (1) of Section 125, --

(i) to change the headquarters of a Gram Panchayat; or
(ii) to alter the limits of a Gram Panchayat area by including within it any local area in the vicinity thereof or by excluding therefrom any local area comprised therein; or
(iii) to amalgamate two or more Gram Panchayat areas and form one Gram Panchayat area in their place; or
(iv) to split up a Gram Panchayat area and form two or more Gram Panchayat areas in its place,

he/it shall declare his/its intention in the form of a proposal to do so by publishing a notification in the "Madhya Pradesh Gazette" and by affixing a copy of such notification on the notice board of the Gram Panchayats concerned and on one or two conspicuous places in the area affected by such intention.

(2) Every such notification shall specify—

(i) in case of clause (i) of sub-rule (1), the existing headquarters of a Gram Panchayat and proposed headquarters;
(ii) in case of clause (ii) of sub-rule (1), the Khasra numbers of the area proposed to be included in a

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Gram Panchayat or proposed to be excluded therefrom;

(iii) in case of clause (iii) of sub-rule (1), the Gram Panchayats proposed to be amalgamated; and

(iv) in case of clause (iv) of sub-rule (1), the particulars of each of the area proposed to be split up.

(3) Every such notification shall invite suggestions and objections by the date to be mentioned therein and any objection or suggestion received from any person with respect to the proposal before the expiry of the date specified above shall be considered by the Governor or the authority authorized by him, as the case may be."

"4. **Disestablishment of village.** —(1) Where the Governor or the authority authorized by him decides under sub-section (1) of Section 126 to disestablish any village he/it shall declare his/its intention in the form of proposal to do so by publishing a notification specified the village proposed to be disestablished in the "Madhya Pradesh Gazette" and by affixing a copy thereof on the notice board of the Gram Panchayat concerned.

(2) the provisions of sub-rule (3) of Rule 3 shall apply to the notification under sub-rule (1)."

4. As mentioned above, as per the time schedule, respective Collectors issued preliminary notification inviting suggestions and objections of concerned persons/villagers, they were directed to submit their representations before the concerned S.D.O. (Revenue) by 3rd of July, 2004, and the hearing was fixed before the S.D.O. (Revenue) on 5th July, 2004, thereafter, they submitted their reports and the Collectors after considering representations and reports of the S.D.O.s issued final notifications on 12th July, 2004.

5. I have heard learned counsel for the parties.

6. Mr. Kanak Tiwari, learned counsel appearing on behalf of the petitioners in W.P.No.2264/2004 contended that as far as the provisions of Section 3 of the Act are concerned that was meant to be exercised for once and not for future; for future actions the relevant section is Section 125 of the Act. Section 3 of the Act comes under Chapter II, which relates to Gram Sabha. Section 125 of the Act comes under Chapter XIII - Miscellaneous.

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Section 125 of the Act deals with change of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area, or split up of a Gram Panchayat area and from two or more Gram Panchayat areas in its place. In that Section, a proviso has been added that before doing so a proposal inviting suggestions and objections shall be issued.

7. Looking to the scheme of the Act it cannot be said that the provisions of Section 3 of the Act regarding Notification of village was meant for once only and not thereafter. Even though under Section 125 of the Act which is under the miscellaneous head, procedure has been envisaged how to amalgamate, alter the Panchayat area, or change the headquarters of Gram Panchayat division, or splitting up a Gram Panchayat area from two or more Gram Panchayat areas in its place; that does not mean that said formation of the Gram Sabha (Section 3) has no application. That is why the Government of Madhya Pradesh authorized the Collectors of respective revenue districts to exercise powers under Sections 3, 125, 126 & 129-B of the Act. Therefore, I do not find any force in this argument.

8. Learned counsel for the petitioners challenged the action of the respondents/State on the following grounds: -

   A. that, the Governor vide notification dated 23.2.1999 delegated its power to the Collectors for exercising the same for the purpose envisaged in Section 125 of the Act, and there is no provision in Section 3 of the Act to delegate the power for constitution of Gram Panchayat, therefore, only the Governor can exercise this power, the same cannot be delegated. Secondly, the Collectors were not authorized to further delegate the delegated powers to the S.D.O. (Revenue) for inviting suggestions & objections and giving hearing to the villagers.

   B. that, the respective Collectors have not given the opportunity of hearing to the villagers and without hearing them, the whole exercise is bad in law.

C. that, as per Section 125 of the Act and Rule 3 of the Rules, the respondents/State were required to issue preliminary notification regarding the *proposed change and invite objections & suggestions*, but in none of the cases, the Collectors issued preliminary notification regarding the proposed change, rather the notifications were issued showing the existing position of the villages and their population as per the Census 2001. Therefore, there was no proposal for change, amalgamation, creation or splitting of the existing Panchayats, as such, the action of the respondents/State in changing/shifting the villages and creating more Panchayats without proposed notice is bad in law, because the same does not meet the statutory requirements as envisaged under Section 125 of the Act and Rule 3 of the Rules. Even in one case notification for splitting of the Panchayat was issued, but later on the Panchayat was not divided into two Panchayats.

D. that in Writ Petition No.2117/2004, the splitting of Gram Panchayats: Pandri & Dhaneshpur having scheduled areas, the notification is not in conformity with the provisions of Section 129-B (1) of the Act.

9. Words alter, amalgamate, excluding & split up have been used in Section 125 of the Act. These words have not been defined in the Act. Therefore, we have to read these words in their ordinary meaning given in the dictionary, as also, we have to read and interpret these words to carryout their meaning with the purpose with which these words have been used to carryout the object of the Act. The meaning of the word 'alter' given in the Black's Law Dictionary is 'a substantial change' and in the New Webster's Dictionary its meaning is 'to make different, modify, change'. Similarly, the word 'amalgamate' has been defined in the New Webster's Dictionary as 'to join together, mix, unite'. The word 'excluding' has been defined as 'to keep out, prevent or forbid the entry'. The word 'split' has been defined as 'to divide, separate, cleave, burst or force apart the layers'. These words have been used in Section 125 of the Act for the

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purpose of delimitation of the existing Panchayats for changing of their headquarters, splitting of the existing Panchayats and amalgamation, looking to the population at the existing time as per Section 12 of the Act. Therefore, these words have been used to carry out the purpose of Sections 3, 8, 10 & 12 of the Act for constituting the Panchayats. In the circumstances, after taking into consideration the Census 2001, the authority authorized under the Act was entitled to reconstitute the Panchayats and for that purpose the authorities were entitled to allow continuation of the existing Panchayats or to constitute a new Panchayat after splitting one Panchayat into two Panchayats and can alter the headquarters, so also entitled to split one Panchayat by taking out a village to include the same in the other group of villages to form a Panchayat. Similarly, the authority was also entitled to (amalgamate) join two or more villages to constitute a Panchayat for the purpose of Sections 3, 8 and 10 of the Act. But the Patwari circle was to be kept intact.

10. Therefore, if we look into the definitions mentioned in Sections 2 (vii), (xxix), 3, 8, 10 (1) & 125 of the Act, joint reading of these provisions makes it clear that the Governor of the State or authority authorized by the Governor by public notification is authorized to constitute/establish Gram Panchayat for the purpose of the Act under Section 3 which consists of a village or group of villages. Therefore, a Panchayat can be constituted for one revenue village or grouping of more than one village looking to their population in conformity with Section 12 of the Act which defines wards in the Gram Panchayat and how much population of Gram Panchayat should be there. Section 3 of the Act, which falls under Chapter II-Gram Sabha, authorizes the Governor to specify a village or group of villages to be a village for the purpose of this Act by a public notification. Therefore, this is the general power vested with the Governor regarding specification of village or group of villages for the purpose of the Act and the Panchayat, which defines under Sections 8 & 10 of the Act. Thereafter, comes Section 125 & 126 of the Act, which fall under Chapter XIII-Miscellaneous. If we look into the provisions of Sections 125 & 126 of the

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Act, these Sections have been incorporated in the Act as an extension to Section 3, because Section 3 envisages general powers of the Governor to specify a village or group of villages for constituting Panchayat for the purpose of the Act. How the Panchayat will be constituted, what procedure is to be adopted that has been laid down in Sections 125 & 126 of the Act and Rules 3 & 4 of the Rules framed under the Act. In fact, Sections 125 & 126 of the Act and the Rules lay down the procedure to be adopted while constituting a Panchayat. In other words, Sections 125 & 126 of the Act have no existence without the aid and power of Section 3. They are in fact extension and aid of Section 3 that how the powers under Section 3 is to be exercised. In other way, Section 3 is charging section and Section 125 derives power from Section 3. Therefore, the legislature in its wisdom has put these provisions of Sections 125 & 126 of the Act under the miscellaneous head. Section 125 prescribes that for the purpose of constituting Panchayats and change of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area, the Governor is authorized to authorize an authority to undertake the exercise and to exercise his powers for constituting Panchayats. Therefore, the argument of the learned counsel for the petitioners that Section 3 of the Act does not specify that the Governor can authorize the Collectors for constituting Panchayat has no force for the above reasons. That is why, notification dated 23.2.1999 was issued by the Governor exercising power under Section 3, 125, 126 & 129-B of the Act which is strictly in conformity with the provisions of the Act. It is settled principle of rule of interpretation of statues that "a statute has to be read so as to make it valid and, if possible, an interpretation leading to a contrary position should be avoided; it has to be construed *ut res magis valeat quam pareat*" as has been held by the Constitution Bench of the Apex Court, in the matter of **The Corporation of Calcutta and another v. Liberty Cinema** reported in **AIR 1965 S.C. 1107.** Therefore, the argument of the learned counsel for the petitioners that the Governor was not entitled to authorize the Collectors for the purpose of constituting Panchayats has no force.

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11. Section 125 of the Act envisages that the Governor or the authority authorized by him may by order change the headquarters of a Gram Panchayat. Sub-section (2) further lays down that on issuance of the order under sub-section (1) the Governor or the prescribed authority shall pass such consequential orders as may be necessary. Under the above provisions, the Governor of Madhya Pradesh vide notification dated 23.2.1999 authorized the Collectors of the concerned revenue districts to dispose of the cases under the Adhiniyam (No.1 of 1994). Section 93 of the Act which deals with delegation of powers states that the State Government, may by notification, delegate to or confer on any officer subordinate to it or to any Panchayat all or any of the powers conferred upon it by or under this Act, except the powers relating to framing of rules. Therefore, under notification dated 23.2.1999 the Collectors of respective revenue districts are legally authorized under the provisions of the Act.

12. Article 154 of the Constitution of India envisages that "the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution". Article 163 further envisages that "there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions". Article 166 envisages that "all executive action of the Government of a State shall be expressed to be taken in the name of the Governor". As also, Section 3 - Note 60 (iii) of the General Clauses Act envisages that "State Government" means, in a State, the Governor. When a function is vested by statute in the State Government, the statutory provision has to be interpreted with the aid of the definition of the "State Government" in the General Clauses Act. According to the definition, if an act is done by a State Government, then it means that the Governor of the State has done, or has to do, it. Therefore, the orders, rules & regulations issued by the State are all acts of the Governor. In the circumstances, the function under Article 243 (g) of the Constitution of India is to be exercised by

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the Governor on the aid and advise of the Council of Ministers. Under the rules of business made by the Governor under Article 166 (3) of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers, as the case may be. In view of the provisions of Article 154 and of Article 163 read with Article 166 of the Constitution 'Governor' means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers, whether it is a notification issued by the Government or a general or special order issued by the State Government, constitutionally both are the acts of the Governor. The above notification authorizing the Collectors to function on behalf of the Government has been issued under Sections 3, 125, 126 & 129-B of the Act. Therefore, it cannot be said that the powers were not exercised by the Governor of the State.

13. As far as the question of Collectors further delegating the powers to the S.D.O. (Revenue) to collect the suggestions/objections and give hearing to those persons is concerned, the argument of the counsel for the petitioners has no force for the reason that the Governor issued notification dated 23.2.1999 and delegated its powers to the concerned Collectors. By another notification, the State Government asked the S.D.O.s to do the ministerial work of collecting the objections/ suggestions, to give hearing to such persons and forward the same to the Collector in accordance with the notification issued by the Government and in terms of the provisions of the Act. Those proposals were finally processed and final decision after going through the proposals was taken by the Collector himself, that is why the Collector himself ultimately took the final decision with regard to reorganization of the existing Gram Panchayat constituted under the Act and delimited the Panchayat areas. Therefore, in the circumstances, it cannot be said that the Collectors or the State Government by circular/notification had sub-delegated its functions or abdicated their powers. For this view, I am fortified with the

decision of the Hon'ble Apex Court in the matter of **State of U.P. and others vs. Pradhan Sangh Kshettra Samiti and others** reported in **1995 Supp (2) SCC 305**. In that case also, similar situation had arisen wherein the Government by a notification under Section 96-A of the U.P. Panchayat Raj Act, 1947, delegated its powers to the Director, Panchayat Raj and by another circular, the Director had only asked the District Magistrates to collect the objections and submit proposals for the reorganization of Gram Panchayats according to the guidelines given in the circular which were in terms of the provisions of the Act, similar challenge was raised before the Court, and the Hon'ble Apex Court held that the powers were not further delegated to the District Magistrates, but the District Magistrates did the ministerial work on behalf of the Director. Similar is the situation in the present case. A huge cumbersome exercise was undertaken for reorganization of the Panchayats, their wards, Janpad Panchayats and District Panchayats. Therefore, it was not feasible for the Collector himself to receive all the objections & suggestions, and scrutinize them. For convenience of the general public and also from the administration point of view, the respective S.D.O.s (Revenue) were authorized to receive such objections and suggestions, and after hearing those persons to send all the material to the Collector for his final decision. Therefore, it cannot be said that the District Collectors further delegated or abdicated their powers, as such, there is no substance in the argument of the learned counsel for the petitioners.

14. As far as point (B) above is concerned, in the catena of judgments the Hon'ble Apex Court has held that exercising powers under the Panchayat Act for delimitation or reorganizations is a legislative act. Unless the Act itself prescribes for hearing, the right of hearing principles of natural justice has no play. In **AIR 1990 S.C. 261 (Sundarjas Kanyalal Bhathija and others vs. The Collector, Thane, Maharashtra and others)**, the Hon'ble Apex Court while interpreting Section 3 (3), (2) of the Bombay Provincial Municipal Corporation Act, 1949, held that

> "The draft notification proposed the formation of what is termed as "Kalyan Corporation". It suggested the merging

> of Municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. Against this proposal, there were many objections and representations from persons, companies and the authorities."

The Apex Court held that exercising power under that Section is a legislative action and rules of natural justice are not applicable to legislative action plenary or subordinate. Similarly, in **AIR 1980 SC 882 (The Tulsipur Sugar Co. Ltd., vs. The Notified Area Committee, Tulsipur)**, while interpreting Section 3 of the U.P. Town Area Act, the Hon'ble Apex Court held that

> "Section 3 does not provide that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. The power of the State Government to make a declaration under Section 3 is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. The maxim '*audi alteram partem*' does not become applicable to the case by necessary implication."

15. Similar view was taken by the Hon'ble Apex Court in the case of **M.R.F. Ltd., vs. Inspector Kerala Govt. and others** reported in **(1998) 8 S.C.C. 227**. The Hon'ble Apex Court held that

> "The principles of natural justice cannot be imported in the matter of legislative action. If the legislature in exercise of its plenary power under Article 245 of the Constitution, proceeds to enact a law, those who would be affected by that law cannot legally raise a grievance that before the law was made, they should have been given an opportunity of a hearing. This principle may, in limited cases, be invoked in the case of subordinate legislation specially where the main legislation itself lays down that before the subordinate legislation is made, a public notice shall be given and objections shall be invited. But the principle of natural justice, including the right of hearing, cannot be invoked in the making of law either by Parliament or by the State Legislature."

In the present cases also vide preliminary notifications, suggestions and objections were invited, concerned persons filed their objections before respective S.D.O.s and even they were heard.

16. Similar question was raised before the High Court of Madhya Pradesh in respect of same provision and the High Court of M.P. in the matter of **Sukumar Mandal v. State of M.P. and others** reported in **1998 (1) Vidhi Bhasvar 265** while interpreting Section 3 of the Act held that

> "specifying of a village or group of villages for the purpose of this Act -- notification is only to give information - action is in nature of executive -- principles of natural justice need not be followed".

In that case, the notification dated 1.3.1994 issued by the Collector, Bastar for and on behalf of the Governor of Madhya Pradesh under Section 3 of the Act notifying village Dhorkatta consisting of group of five villages but excluding village Kurusbodi was challenged. Village Kurusbodi by a separate notification issued on 1.3.1994 is shown as forming part of village Gondbahur. The petitioner's case was that objections and proposals were invited vide notification dated 31.1.1994 proposing Kurusbodi to be included in village Dhorkatta. The petitioner along with some other villagers made a representation to the Collector Bastar insisting that village Kurusbodi be included in village Dhorkatta and the representations made by other Panchas and villagers to include the said village in village Gondbahur be not accepted. The Court held that "the principles of natural justice in the matter of formation of a village can have no application".

17. In the matter of **State of Punjab v. Tehal Singh and others** reported in **(2002) 2 SCC 7**, while interpreting Sections 3 & 4 of the Punjab Panchayati Raj Act, 1994, the Hon'ble Apex Court held that

> "power exercisable under Sections 3 and 4 is legislative in character — Principles of natural justice need not be observed by State Govt. in the absence of clear provisions stipulating such observance."

In that case also similar objection was raised that before constituting Gram Sabha, Khanpur comprising abadi portions of Village Wazidpur,

Village Khanpur and Harijan Colony, no opportunity of hearing was afforded before declaring the territorial area of Village Khanpur inasmuch as before establishing Gram Sabha, Khanpur, the notifications were invalid. But the Hon'ble Apex Court rejecting the arguments held that

> "(1) where provisions of a statute provide for legislative activity i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that a certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern the interest of an individual but relates to the public in general or concerns a general direction of a general character and is not directed against an individual or to a particular situation; and (3) lays down future course of action, the same is generally held to be legislative in character".

The Apex Court applying the said test held that

> "The provisions of Sections 3 and 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area are not concerned with the interest of an individual citizen or a particular resident of that area. Declaration contemplated under Section 3 of the Act relates to an area inhabited by the residents which is sought to be excluded or included in a Gram Sabha. The declaration under Section 3 of the Act by the Government is general in character and not directed to a particular resident of that area. Further, the declarations so made under Sections 3 and 4 of the Act do not operate for past transactions but for future situations. Therefore, the action is legislative in character."

18. In the matter of **Rajdhar Singh vs. State of M.P. and another** reported in **1995 M.P.L.J. 152**, a Division Bench of the Madhya Pradesh High Court held that

> "Notifications having been issued in exercise of powers which are legislative in character, interference by High Court is impermissible. The decision of the Authorities in constituting a Gram Panchayat by name of 'M' was perfectly in accordance with law. It was a decision over which the High Court would not sit as a court of appeal and would not substitute its own views."

19. In view of the law laid down by the Hon'ble Apex Court and the Madhya Pradesh High Court, the act of the respondents/State by constituting Panchayat for a village for the purpose of the Act, which was necessitated on account of the general Census 2001, was legislative in nature, no right to the petitioners arose for hearing and principles of natural justice does not apply. Bare reading of Sections 3, 125, 126 & 129-B of the Act and Rules 3 & 4 of the Rules do not contemplate hearing of objectors or the persons who gave their suggestions in response to preliminary notifications. Therefore, no legitimate grievance can be raised by the petitioners.

20. In view of the above position, the judgment cited by the learned counsel for the petitioners in the matter of **The Corporation of Calcutta (Supra)** has no application looking to the facts and circumstances of the present case and in view of the above decisions, particularly in the matter of formation of the Panchayats. In the case referred above, the Constitution Bench of the Hon'ble Apex Court held that the essence of legislative power cannot be delegated and in this case the essence of legislative power has not been delegated. Section 125 of the Act quoted in the previous part of this order lays down that the Governor can delegate its powers on an authority to exercise his powers for the purpose. In view of the above judgment, the Court was required to interpret the provisions of sub-section (2) of Section 548 of the Calcutta Municipal Act regarding the imposition of licence fee. The Apex Court held that

> "Section 548 is a piece of delegated legislation. To pay the tax is not an essential part of legislation, neither would the power to decide the rate of tax be so. Therefore, we think that apart from the express observation made, this case on principle supports the contention that fixing of the rate of a tax is not of the essence of legislative power."

21. Looking to the above principle of law, if we look into the provisions of the present Act, the Government itself issued the notification whereby invited objections and suggestions to be filed before the S.D.O. (Revenue), hearing was to be given before the S.D.O. and the S.D.O. was authorized to hear the objections/suggestions. Proviso to Section 125 of the Act

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envisages that no order under this section shall be made unless a proposal in this behalf is published for inviting suggestions and objections in such manner as may be prescribed and objections are considered. Looking to this proviso, in all these cases it has been admitted by the parties that objections and suggestions were invited those were to be filed before the S.D.O. (Revenue), in fact those objections were filed, even the hearing was not contemplated as per the provisions of Section 125 of the Act, but even then, hearing was given by the S.D.O. and those objections and suggestions were sent to the respective Collectors. The Collectors after considering those objections and suggestions took the decision, passed the order and issued final notification. Therefore, I do not find any violation of provisions of Sections 3, 125, 126 & 129-B of the Act and the Rules. As far as the question of hearing is concerned, hearing is not contemplated either under Section 125 of the Act or under the Rules. In the circumstances, when there is no specific provision in the Act for hearing, it cannot be said that the principles of natural justice have been violated.

22. As far as point (C) above is concerned, learned counsel for the petitioners Mr. Kanak Tiwari, Mr. Sunil Sinha, Mr. P.K.C. Tiwari, and Mr. Rajeev Shrivastava, vehemently argued that the form of preliminary notification was not in conformity with the provisions of Section 125 of the Act as well as Rule 3 of the Rules which deal with division, amalgamation, creation, split or alteration of Gram Panchayat area. Preliminary notifications simply depict the existing villages, which form part of the existing Panchayat and the population as per Census 2001. Through these preliminary notifications, the proposed changes were not indicated. Without any proposals in all these matters, the respective Collectors either created the Panchayats or shifted the villages from one Panchayat area to another Panchayat area. Since the proposed preliminary notification was not in conformity with Section 125 of the Act and Rule 3 of the Rules, therefore, the final notification cannot be held to be valid being contrary to the provisions of the Act.

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23. The learned Deputy Advocate General argued that in the first place, Section 3 of the Act under which the powers were delegated to the Collectors by the Governor does not contemplate any such proposal inviting objections and suggestions, and the same being legislative in character, the petitioners are not entitled to assail the final notification. In the alternative, he argued that even if we take the preliminary notification as it is in which the existing position was reflected and the population as per Census 2001 was shown, all the concerned persons and the villagers were aware that why these preliminary notifications have been issued for delimitation and they were knowing that these notifications have been issued for amalgamation or alteration or creation of Panchayat area, or change of headquarters of Gram Panchayat, or splitting up of Gram Panchayat area, accordingly, they submitted their objections/suggestions which were taken care of by the District Collectors. Therefore, no serious prejudice was caused to the petitioners. After considering the objections/suggestions and taking into consideration Census 2001, the respective Collectors passed the final notification conforming with the provisions of Sections 3, 8, 10, 12, 125, 126 & 129-B (1) of the Act, and substantial compliance was made by the respective Collectors, as such, no legitimate grievance can be raised against the legislative action of the State.

24. For deciding this objection raised by the learned counsel for the petitioners, I take the facts of W.P.No.2433/2004 (Geetaram Gond and another vs. State of Chhattisgarh and another), in which as per the return filed by the State/respondents, notifications Annexures R-3 and R-4 were issued. As per notification Annexure R-3, existing position of Gram Panchayat, Barodakalan consisting of Villages: Barodakalan, Barodakhurd, Sonpur & Bitli was shown and population as per Census 2001, 1578 was also shown. As per notification Annexure R-4, existing position of Gram Panchayat, Singarpur consisting of revenue villages: Singarpur, Gaangpur, Bhathelatola, Kauwapani was shown and population as per Census 2001, 1651 was also shown. Therefore, no change was proposed in it. However, as per

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the final notification Annexure P-1, out of two Panchayats Barodakalan & Singarpur one new Panchayat Gaangpur consisting of Villages: Gaangpur & Bhathelatola was created of which population is 1024. As per Annexure P-2, out of Gram Panchayat: Barodakalan, Village: Sonpur was taken out and shifted to Gram Panchayat: Singarpur. As per Annexure P-3, Gram Panchayat: Singarpur has been constituted consisting of original Village: Singapur, Kauwapani and adding one village: Sonpur; taking out Villages: Gaangpur & Bhathelatola, out of which Gangpur Panchayat was constituted as per Annexure P-1. However, pursuant to these preliminary notifications, the villagers of Gram: Bhathelatola requested that a Gram Panchayat of Singarpur can be reconstituted by including villages: Bhathelatola & Kauwapani. It was further requested that Village: Gaangpur can be removed from Singarpur and added in Barodakalan. Similarly, by Annexure P-8, a suggestion was given by the villagers of Village: Sonpur in which it has been written that the preliminary notification regarding delimitation of the Panchayat has been issued, therefore, as the distance of Sonpur from Singarpur is 5 kms., as such, Sonpur be included in Gaangpur. Similarly, a representation (Annexure P-9) was given by the villagers of Singarpur and Annexure P-10 was given by the villagers of Bhathelatola. A resolution was also passed by the Gram Panchayats: Barodakalan and Singarpur on 20.7.2004 that Gram Panchayats: Barodakalan and Singarpur be kept as it is. However, the Collector, after considering all these suggestions and objections passed the impugned notifications Annexures P-1, P-2 & P-3 by constituting new Panchayat: Gaangpur by splitting the existing Panchayats: Barodakalan & Singarpur, taking out Villages: Gaangpur & Barodakalan from Gram Panchayat: Singarpur, new Panchayat: Gaangpur was created and Village: Sonpur was given to Gram Panchayat: Singarpur. In the circumstances, even if the preliminary notification of the proposed change in the existing Gram Panchayats for delimitation in the Panchayats was not issued strictly in conformity with proviso to Section 125 of the Act and Rule 3 of the Rules, even then all concerned persons and the authorities every one were working with the understanding that as per the preliminary notification, looking to Census

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2001 and notification dated 1.6.2004 issued by the State Government as mentioned above, some new Panchayats are to be created and some areas of some Panchayats may be shifted in one Panchayat or the other in conformity with the provisions of Sections 3, 8 & 125 of the Act. Therefore, it cannot be said that the villagers in all these cases were mislead or were not aware that in view of the preliminary notifications no new Panchayats are to be constituted or areas of one Panchayat or the other Panchayats are to be shifted. It cannot be held by any stretch of imagination that the villagers or all concerned were taken by surprise.

25. In the given factual situation, I am of the considered opinion that no serious prejudice has been caused to any of the parties. The final notifications have been issued strictly in conformity with the provisions of the Act looking to the Census 2001. Therefore, substantial compliance of the provisions of Sections 3, 8, 125, 126 & 129-B of the Act and Rules 3 & 4 of the Rules has been made. More particularly, in undertaking this exercise in none of the cases no mala fide has been imputed or established against the respondent Collectors, as such, on account of this procedural irregularity whole exercise cannot be set at naught. In fact, while taking into consideration all the above facts, it is not the sum but the substance has to be taken into account and when we take the substance into account, the only conclusion which can be arrived at, looking to the facts and circumstances of each case, is that the substantial compliance of proviso to Sections 3, 12, 125 & 129-B of the Act and Rule 3 of the Rules has been made.

26. Now, coming to W.P.No.2117/2004 regarding the notification issued under Section 129-B of the Act constituting Panchayats: Pandri & Dhaneshpur after splitting Panchayat: Pandri {point (D) above}, Mr. Sunil Sinha, counsel for the petitioner argued that the impugned notification was issued under Section 129-B (1) of the Act and the same was not issued under Section 3, therefore, the whole action is bad in law. It is an admitted position that these Panchayat areas fall under the scheduled area and for constituting the villages and Gram Panchayats a special provision has been made under

the Act. Chapter XIV-A of the Act deals with Special Provisions for Panchayats in the Scheduled Areas. Section 129-A of the Act defines 'Gram Sabha' and 'Village'. Section 129-B of the Act deals with Constitution of Village and Gram Sabha, and envisages that the Governor shall by public notification specify a "Village" for the purposes of this Chapter. As has been mentioned in the earlier part of this order, vide notification dated 23.2.1999, the Governor also authorized the Collectors to exercise power under Section 129-B (1) of the Act for the purpose of constitution of Village and Gram Sabha, accordingly, the Collector exercised the power and created two villages namely, Pandri & Dhaneshpur by splitting Village: Pandri. It is true that these notifications were not issued under Sections 125 & 126 of the Act for changes of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area or disestablishment of village or splitting of a Gram Panchayat area. Therefore, there was no question of inviting suggestions or objections. Even then, as mentioned above, the Collector, Surguja, vide notification dated 25.6.2004 issued under Section 129-B (1) of the Act invited objections and suggestions showing the existing position of Village: Pandri which includes Pandri & Dhaneshpur, and the Census 2001 was also shown. On this, the Panchayat and the villagers submitted their submissions Annexure P-5. Vide final notification Annexure P-6, Panchayat: Pandri was split into two Panchayats. Apart from the above, the above two Panchayats have been created under Section 129-B (1) of the Act. This Section is in Chapter XIV-A-Special Provisions for Panchayats. In this chapter "Village" has been defined in clause (b) and "Gram Sabha" in clause (a) of Section 129-A. District: Surguja is a notified scheduled area under Schedule V of the Constitution of India. The Parliament has passed the Panchayat (Extension to Scheduled Area) Act, 1996 in exercise of the powers under Article 243-M of the Constitution. Thereafter, by an amendment in the M.P. Panchayat Raj Adhiniyam, 1993 Chapter XIV-A has been added. This chapter has been given overriding effect in respect of the provisions of the Act. Therefore, the definition of "village" in this chapter overrides the definition of village given in Section 3 of the Act.

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Thereafter, the M.P. Scheduled Areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998 have been framed. As has been mentioned in various judgments of the Hon'ble Apex Court and the M.P. High Court, the said exercise of power is legislative in character and the Courts cannot interfere in the exercise of such powers. This Court cannot sit as a court of appeal and replace its view in place of the authority. As such, I do not find any substance in the argument of the learned counsel for the petitioner. Similar view was taken by the M.P. High Court on the same point in the matter of **Bechan Singh vs. State of M.P. and others** reported in **2000 (1) M.P.L.J. 405**.

27. In the circumstances, the impugned notifications in the above said writ petitions do not suffer from any legal infirmity. Therefore, the writ petitions are dismissed. Parties are left to bear their own costs.

Sd/-
L.C. Bhadoo
Judge

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